

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL ACTION NO. 4:12CR060
	§	
NICHOLAS PETER BAKER	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a final revocation hearing on January 3, 2019, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Wes Wynne.

Nicholas Peter Baker was sentenced on June 13, 2013 before the Honorable Judge Richard A. Schell of the Eastern District of Texas, after pleading guilty to the offense of Possession of a Firearm in Furtherance of a Drug Trafficking Crime, a violation of Title 18 U.S.C. §924(c)(1). This offense carried a statutory maximum imprisonment term of not less than five (5) years and not more than life. The guideline imprisonment range based on a criminal history category of II, was 60 months. Nicholas Peter Baker was subsequently sentenced to 60 months imprisonment followed by a two (2) year term of supervised release, subject to the standard conditions of release, and a \$100 special assessment fee. Nicholas Peter Baker completed his period of imprisonment and began service of the supervision term on January 13, 2017. On June 5, 2017, this case was reassigned to the Honorable Amos L. Mazzant, III, United States District Judge for the Eastern District of Texas. On May 3, 2018, the United States Probation Officer executed a Request for Modifying the Conditions or Term of Supervision with Consent of the Offender, Nicholas Peter

Baker (Dkt. 93, *sealed*). Nicholas Peter Baker's conditions of supervision were modified to include alcohol abstinence. Nicholas Peter Baker agreed to the modification and executed a Probation Waiver Form 49, Waiver of Hearing to Modify Conditions of Supervised Release.

On December 18, 2018, the United States Probation Officer executed a Petition for Warrant or Summons for Offender Under Supervision [Dkt.95, *sealed*]. The Petition asserted that Defendant violated two (2) conditions of supervision, as follows: (1) Defendant shall not commit another federal, state, or local crime; and (2) Defendant shall report to the probation officer and shall submit a truthful and complete monthly report within the first five days of each month.

The Petition alleges that Defendant committed the following acts: (1) On May 14, 2017, Nicholas Peter Baker was arrested by the Martin County Sheriff's Office in Jensen Beach, Florida, for the misdemeanor charge Driving Under the Influence, Martin County case number 2017-CT-001522. On July 31, 2017 he was convicted of the above charge. On April 17, 2018 Nicholas Peter Baker was arrested by the Lewisville Police Department for the misdemeanor offense of Public Intoxication. On September 20, 2018, he was convicted of the offense and assessed a fine. On or about November 28, 2018, in Denton County, Texas, Nicholas Peter Baker committed the offense of Criminal Trespass, a Class B misdemeanor, as alleged in Lewisville Police report #18-13805. On or about December 10, 2018, in Denton County, Texas, Nicholas Peter Baker committed the offense of Terroristic Threat, a Class B misdemeanor, as alleged in Lewisville Police report #18-14283; and (2) Nicholas Peter Baker failed to submit a monthly report as instructed during the months of March and December 2018.

Prior to the Government putting on its case, Defendant entered a plea of true to allegations one (1) and two (2) of the Petition. As to allegation one (1), Defendant is pleading true to the nature of noncompliance related only to the misdemeanor offenses of Driving Under the Influence and

Public Intoxication. At hearing, the Government moved to dismiss the remainder of the nature of noncompliance stated in allegation one (1). Having considered the Petition and the plea of true to allegation one (1) as the nature of noncompliance related to the Driving Under the Influence and Public Intoxication and allegation two (2) of the Petition, the Court finds that Defendant did violate his conditions of supervised release.

Defendant waived his right to allocate before the District Judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant's supervised release be revoked and that he be committed to the custody of the Bureau of Prisons to be imprisoned for a term of six (6) months of imprisonment with no term of supervised release to follow.

The Court also recommends that Defendant be housed in the Bureau of Prisons in Seagoville, Texas, if appropriate.

SIGNED this 7th day of January, 2019.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE